

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 228 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SIMPLEX RUBBER PRODUCTS PVT LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR JP SHAH for Petitioner

MR MIHIR THAKORE for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE Y.B.BHATT

Date of decision: 04/10/96

ORAL JUDGEMENT

At the instance of the assessee, the following question is referred to us:

"1. Whether on the facts and in the circumstances of the case, the assessee was entitled to investment allowance at

the rate of 25% because it manufactures the items mentioned in the Ninth Schedule of the Income-tax Act,1961?"

The assessee is a Private Limited Company. The assessment year under reference is 1977-78, the previous year being the year ended 31st March, 1977. During the course of assessment proceedings assessee claimed investment allowance at the rate of 25% of the cost of new machineries under sec.32A of the Income-tax Act on the ground that items manufactured by the Company were covered within the term industrial and agricultural machinery specified in the Ninth Schedule of the Income-Tax Act,1961. The said claim of the assessee was allowed by the Income-tax Officer. On examination of the case record, the Commissioner of Income-tax observed that the said items of rubber products, namely, rollers, diaphragms, valves, lines, articles, rubber hoses etc. cannot be said to be machinery covered under item no.8 of the Ninth Schedule. The Commissioner, therefore, arrived at a finding that the assessee Company is not entitled to investment allowance at the rate of 25% of the cost of machinery. He, therefore, held that the order of I.T.O. was erroneous, in so far as it was prejudicial to the interest of the revenue and set aside the order directing the I.T.O. to withdraw the investment allowance already granted to the assessee. The appeal preferred by the assessee against the said order came to the dismissed upholding the view taken by the Commissioner. Items manufactured by the assessee Company is covered within the term industrial and agricultural machinery specified in the Ninth Schedule of the Income-tax Act,1961 as held by this Court in ITR no.384/81 decided on 6th October,1993 wherein it has been observed as under:

" The aforesaid question is covered by the decision of this Court in the case of Industrial Machinery Manufacturers vs. C.I.T..(1993) 203 I.T.R. 436, wherein the Court has held that the Tribunal was wrong in holding that humidifiers manufactured by the assessee were not textile machinery or textile accessories. The Court held that the assessee was entitled to get higher development rebate as prescribed. In this view of the matter, the textile accessories manufactured by the assessee in the present case also were covered by the Ninth Schedule"

In view of the said judgment of this Court assessee was entitled to investment allowance at the rate of 25% as the items manufactured fall within the Ninth Schedule of the Income Tax Act,1961. The question

referred to us is therefore required to be answered in the affirmative i.e. in favour of the assessee. Reference stands disposed of accordingly.

sf-sms